

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

CUSTOMS AND TAX
ADMINISTRATION OF THE KINGDOM
OF DENMARK
(SKATTERFORVALTNINGEN) TAX
REFUND SCHEME LITIGATION

This document relates to:

18-cv-07824; 18-cv-07827; 18-cv-07828;
18-cv-07829; 19-cv-01781; 19-cv-01783;
19-cv-01785; 19-cv-01788; 19-cv-01791;
19-cv-01792; 19-cv-01794; 19-cv-01798;
19-cv-01800; 19-cv-01801; 19-cv-01803;
19-cv-01806; 19-cv-01808; 19-cv-01809;
19-cv-01810; 19-cv-01812; 19-cv-01813;
19-cv-01815; 19-cv-01818; 19-cv-01866;
19-cv-01867; 19-cv-01868; 19-cv-01869;
19-cv-01870; 19-cv-01871; 19-cv-01873;
19-cv-01894; 19-cv-01896; 19-cv-01918;
19-cv-01922; 19-cv-01926; 19-cv-01928;
19-cv-01929; 19-cv-01931; 21-cv-05339

MASTER DOCKET

18-md-2865 (LAK)

**DEFENDANT MICHAEL BEN-JACOB'S RESPONSE TO PLAINTIFF
SKATTEFORVALTNINGEN'S STATEMENT OF ADDITIONAL MATERIAL FACTS**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, Defendant Michael Ben-Jacob responds to Plaintiff Skatteforvaltningen (“SKAT”) Statement of Additional Material Facts as follows.

1. In June and July 2015, SKAT received information from two different sources indicating that Sanjay Shah, Solo Capital, and certain pension plans may have submitted fraudulent dividend withholding tax refund claims. (Weinstein Decl. Ex. 5 (C. Ekstrand Tr.) at

197:5-25, 202:8-17, 221:12-222:16.)

Response: Undisputed.

2. Following the reports of fraudulent dividend withholding tax refund claims, SKAT began investigating and, in August 2015, stopped paying all dividend withholding tax refund claims while it continued its investigation. (*Id.* (C. Ekstrand Tr.) at 161:20-162:6.)

Response: Undisputed.

3. In January 2021, defendants John van Merkenstein and Richard Markowitz asserted an advice of counsel defense and waived their attorney-client privilege with respect to their communications with Michael Ben-Jacob and other attorneys. (*See* Stipulation and Order Limiting Waiver Pursuant to Rule 502(d) of the Federal Rules of Evidence, ECF No. 521; Stipulation and Order Clarifying Limiting Waiver Pursuant to Rule 502(d) of the Federal Rules of Evidence, ECF No. 593.)

Response: Undisputed.

4. In February and March 2021, defendants John van Merkenstein and Richard Markowitz, began producing communications and documents, previously withheld as privileged, that revealed Ben-Jacob's involvement in the Schedule A Plans' fraud that formed the basis for SKAT's allegations in the June 2021 complaint. For instance, on March 9, 2021, defendants produced communications revealing Ben-Jacob's role in forming partnership agreements for the Schedule A Plans. (*See* Weinstein Decl. Ex. 6.)

Response: Disputed that SKAT first learned facts suggesting Ben-Jacob's involvement in the Schedule A Plans' alleged fraud that formed the basis of SKAT's allegations in the June 2021 complaint upon the production of communications and documents in February and March 2021. (*See* Ben-Jacob's Rule 56.1 Statement of Material Facts, ECF No. 1002, ¶¶ 19, 26, 26(a)-(c), 27, 27(a)-(b), 29). Also disputed that Exhibit 6 to the Weinstein Declaration establishes that SKAT first learned of "Ben-Jacob's role in forming partnership agreements for the Schedule A Plans" in 2021 as the document does not

show, or purport to show, Ben-Jacob's "role" in "forming partnership agreements for the Schedule A Plans." (See Weinstein Decl. Ex. 6.)

Dated: New York, New York
June 14, 2024

DEWEY PEGNO & KRAMARSKY LLP

By: /s/ Thomas E.L. Dewey

Thomas E.L. Dewey
Sean K. Mullen
777 Third Avenue – 29th Floor
New York, New York 10017
Tel.: (212) 943-9000
Fax: (212) 943-4325
tdewey@dpklaw.com
smullen@dpklaw.com

KEKER, VAN NEST & PETERS LLP

Elliot R. Peters
Julia L. Allen
633 Battery Street
San Francisco, CA 94111
Tel.: (415) 962-7188
epeters@keker.com
jallen@keker.com

Attorneys for Defendant Michael Ben-Jacob